

REMARKS

No amendments have been made to the claims or the specification.

Claims 1-50 are pending in the application. Claims 1-6, 9, 18, 19, 21, 29-31, 38, 43, 44, and 46-48 have been rejected. Claims 7, 8, 10-17, 22-28, 32-37, 39-42, 45, 49, and 50 have been objected to as being dependent upon a rejected base claim.

The status of claim 20 is unclear. Applicants respectfully request clarification of the status of claim 20.

Although the Patent Office has acknowledged that an Information Disclosure Statement was filed on December 2, 2003 (believed to be the Information Disclosure Statement filed with the application on September 17, 2003), Applicants have not received a signed copy of this Information Disclosure Statement, acknowledging that the Examiner has considered the references therein. Applicants respectfully request a signed copy of the Information Disclosure Statement.

Co-pending Patent Application Serial No. 10/215,390

The Office Action requests that the Applicants furnish a copy of the claims as pending from co-pending Patent Application Serial No. 10/215,390.

This application (with claim in pending form) has been included herewith in an Information Disclosure Statement.

Rejections Under 35 U.S.C. §112, ¶2

Claims 5 and 6 have been rejected under 35 U.S.C. §112, ¶2, as the term "predetermined volume" was considered to be indefinite.

It is believed that those of ordinary skill in the art would understand the meaning of the term "predetermined volume" both from the ordinary meaning of that term and from the specification, for example at page 3, lines 11-13 and page 11, lines 21-28. In connection with a reasonable scope attributable to that term in view of the instant application, there is no specific therapeutic purpose to which the claim should be limited. As recited in the specification, the invention allows for a set volume of material to be delivered precisely. For example, as noted in the specification, a fluent prepolymer can be subjected to a sudden controlled pulse of high pressure to force a predetermined volume of the liquid through a delivery outlet, and/or a driver

element is movable in predetermined increments to allow a predetermined volume of material to be delivered, and/or means can be provided for limiting the extent of travel of a plunger so that a sudden force applied by a release of the spring will cause a predetermined quantity of prepolymer liquid to be ejected through a nozzle. Thus, the amount and use is not limited, but the amount can be a set amount precisely controlled by, for example, setting the device in a certain way.

Accordingly, it is believed that "predetermined volume" is not indefinite, and withdrawal of the rejection of claims 5 and 6 is respectfully requested.

Double Patenting

Claims 1-4, 9, 18, 19, and 21 have been rejected under the judicially-created doctrine of obviousness-type double patenting as being unpatentable over claims 14-16 of U.S. Patent No. 6,468,520. However, the Patent Office stated that a timely filed Terminal Disclaimer in compliance with 37 C.F.R. §1.321(c) may be used to overcome this rejection.

Without acceding to the correctness of this rejection, enclosed herewith is a Terminal Disclaimer with respect to U.S. Patent No. 6,468,520 in compliance with 37 C.F.R. §1.321(c) to overcome this rejection. In view of this Terminal Disclaimer, claims 1-4, 9, 18, 19, and 21 are believed to be allowable. Withdrawal of the rejection of these claims is therefore respectfully requested.

Rejections Under 35 U.S.C. §102(b)

Claims 29-31, 38, 43, 44, and 46-48 have been rejected under 35 U.S.C. §102(b) as being anticipated by Jishi-Shika Kougyou K.K., JP 4-61511 ("JP '511").

Applicants do not see where in JP '511 is there a disclosure or suggestion of a source of pressurized gas or a source of pre-polymeric material. In the figures, element 1 is identified as a power source box, which is connected by a cord 4 to a hand piece 2, which includes a protruding glass fiber rod 3 connected to a thin fiber rod 5. Without more information (e.g., an English translation) which has not been presented, it seems impossible to conclude that the device of JP '511 includes any sources of a pressurized gas or pre-polymeric material and, instead, is not simply a hand-held light source. Since the portion of the device that appears to interact directly with a patient is a "thin fiber rod," a light source is suggested. Thus, it is believed that claims

29-31, 38, 43, and 46-48 are not anticipated by JP '511, and it therefore respectfully requested that the rejections of these claims be withdrawn.

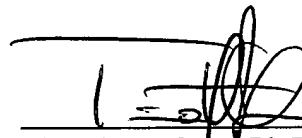
CONCLUSION

In view of the foregoing remarks, this application should now be in condition for allowance. A notice to this effect is respectfully requested. If the Examiner believes, after this response, that the application is not in condition for allowance, the Examiner is requested to call the Applicants' representatives at the telephone number listed below.

If this response is not considered timely filed and if a request for an extension of time is otherwise absent, Applicants hereby request any necessary extension of time. If there is a fee occasioned by this response, including an extension fee, that is not covered by an enclosed check, please charge any deficiency to Deposit Account No. 23/2825.

Respectfully submitted,

By:



Timothy J. Oyer, Ph.D., Reg. No. 36,628
Tani Chen, Sc.D., Reg. No. 52,728
Wolf, Greenfield & Sacks, P.C.
600 Atlantic Avenue
Boston, Massachusetts 02210-2206
Telephone: (617) 646-8000

Docket No.: F0397.70070US00
Date: November 11, 2004
x11/11/04x